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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7776 OF 2006

Brahman Seva Mandal & others Petitioners
versus
Mrs.Sujata Milind Rumade Respondent

Mr.G.S.Godbole for petitioners.
Mr.J.R.Trivedi for respondent.

CORAM : A.S.OKA, J.
DATE : 27th April 2007

PC :

1. Heard learned counsel for the parties. The petitioners are the original defendants in a suit filed by the respondent. A notice for temporary injunction was taken in the suit filed by the respondent. By order dated 16th January 2006, the notice taken out by the respondent- plaintiff was allowed by the learned Judge of the Small Causes Court, at Mumbai. The operative part of the order of the learned Judge reads thus :-

> "Notice is made absolute.
>
> The defendants are hereby restrained by order of mandatory injunction, in the temporary form, directing them to open the lock and permit the plaintiff, her persons, office bearers and others, those who are coming for the inquiry with them, from entering and using the suit premises

> for the purpose for which it was let out till final decision of the suit.
>
> The defendants are further restrained not to prevent the entry of the plaintiff her students, office bearers or any other persons, claiming through her, in the suit premises, from 9.30 a.m. Till 9.30 a.m. till the decision of this suit."

2. An appeal was preferred by the present petitioners before the Appeal Bench of the Court of Small Causes. By the judgment and order dated 28th September 2006, though the appeal was dismissed, the appellate court made a modification to the operative order passed by the learned Judge of the Small Causes Court.

> "Notice is made absolute.
>
> The defendants are hereby ordered by way of mandatory injunction, to open the lock and permit the plaintiff, her persons, office bearers and others, those who are coming for the inquiry with them, to enter and use the suit premises for the purpose for which it was given, till the final decision of the suit.
>
> The defendants are further restrained from preventing the entry of the plaintiff her students, office bearers or any other person claiming through her, in the suit premises, unless by due process of law, till the decision of the suit."

3. The suit was filed by the respondent for a declaration that she is a tenant in respect of

the suit premises more particularly described in the plaint which is Room no.1A on the mezzanine floor of the building in question. Both the Courts below have held that prima facie the case of tenancy has been established by the respondent.

4. The submission made by the learned counsel appearing for the petitioners is that in absence of any appeal or cross-objection, the Appellate Court could not have modified the operative part of the order passed by the Trial Court. The second submission is that the respondent was never put in exclusive possession. It is further submitted that to the tenants occupying other premises in the same property, the petitioners have been issuing rent receipts in prescribed statutory format. He invited my attention to the alleged rent receipts issued by the petitioners in favour of the respondents. The said receipts are not in the form prescribed by the statute. He submitted that merely because the word "rent" has been used in the said rent receipts, it cannot be said that what was accepted by the respondent was the rent. He invited my attention to the pleadings and other material to show that the respondent was allowed to use the mezzanine

floor for a limited period during specific hours of the day and therefore the findings recorded by the Courts below are illegal and arbitrary.

5. Learned counsel for the respondent supported the impugned judgment and orders.

6. I have perused the correspondence made between the parties which is annexed to the petition. There is a letter dated 25th March 2004 on record by which the respondent forwarded post dated cheque of Rs.5,000/- towards rent. The appeal bench has also referred to the letter dated 20th March 2003 sent by the respondent to the petitioners by which 12 cheques were forwarded by the respondent to the petitioners towards the rent. The Appeal Bench has referred to the said letter and has recorded a prima facie finding that what was stated in the said letter was not objected to by the petitioners. The appeal bench has also referred to the letter dated 1st April 2003 addressed by the petitioners to the respondent. The appeal court has disbelieved the case made out by the petitioners that the said premises was also allowed to be used by the petitioners to another institution by name Sanskar Bharati. Considering the

correspondence between the parties, the Appellate Court has disbelieved the case made out by the petitioners that the respondent was allowed to use the premises only for two days in a week. The findings recorded by the courts below are based on prima facie consideration of the documents and affidavits on record. It is difficult to interfere with the findings recorded by the courts below in this writ petition under Article 227 of the Constitution of India.

7. However, there is a merit in the first grievance made by the learned counsel for the petitioners regarding modification of the operative part of the order of the Trial Court made by the appeal bench. There is nothing on record to show that the respondent had filed any cross objection. No attempt was made by the respondent to challenge the operative part of the order passed by the Trial Court. Thus, the modification made by the appeal bench of the operative part of the Trial Court order is illegal and deserves to be set aside.

8. Hence, the petition must succeed in part and I pass accordingly following order :-

(a) That part of the order of the Appeal Bench by which operative part of the order passed by the Trial Court is modified is hereby set aside and it is made clear that the order dated 16th January 2006 passed by the Trial Court will continue to operate till disposal of the suit;

(b) All contentions of the parties on merits of the suit are expressly kept open;

(c) The suit will be decided without being influenced by the prima facie observations of the Courts below as well as this Court;

(d) Hearing of the suit is expedited;

(e) Parties to act on an ordinary copy of this order duly authenticated by the Registry of this Court.

9. At this stage a prayer is made by the counsel for the petitioners to continue the ad-interim relief granted on 20th February 2007. The said prayer is opposed by the respondent. As ad-interim relief is operative in favour of petitioners from 28th February 2007 and as it is not possible to immediately make available a copy

MST

of this order to the parties, the ad-interim relief granted on 28th February 2007 will continue to operate till 30th June 2007.

(A.S.OKA, J.)